

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 3635
Applicants : Philip C. Georgeau et al.
Appln. No. : 10/726,341
Filing Date : December 3, 2003
Confirmation No. : 9027
For : ROOFING SYSTEM AND METHOD

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

REPLY UNDER 37 C.F.R. §1.116

In the Office Action dated Sept 6, 2007, claim 16 was rejected under 35 USC §103 over Venable U.S. Patent No. 4,996,812 in view of Georgeau et al. U.S. Patent No. 6,579,924, and in view of Van Wagoner U.S. Patent No. 4,719,723 and further in view of Beck U.S. Patent No. 4,498,267. The Office Action states that "applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, this action is made final. See MPEP §706.07(a)."

The preceding Office Action (dated Feb. 23, 2007), states that "claim 16 is allowable over the prior art of record."

MPEP §706.07(a) states that "under present practice, second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an Information Disclosure Statement filed during the period set forth in 37 CFR §1.97(c) with the fees set forth in 37 CFR §1.17(p)."

Claim 16 was not amended in the response dated June 25, 2007, such that the new grounds of rejection of claim 16 could not have been necessitated by applicant's amendment.

Accordingly, the present Office Action clearly cannot be made final according to the criteria set forth in MPEP §706.07(a).